

Lofgren Correspondence on Homeland Security Committee Oversight of NSA Warrantless Surveillance Prog

The Honorable Robert Simmons
Chairman, Subcommittee on Intelligence,
Information Sharing and Terrorism Risk Assessment
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

It appears that we have a profound disagreement about what our Subcommittee should do by way of oversight of the NSA's warrantless surveillance program or programs. I think we should engage in vigorous oversight. So far you have failed to arrange for oversight of this or these NSA programs.

From your comments, you seem to believe that you, through your staff, have tried to accommodate my efforts. In fact, attempts to conduct vigorous oversight have been ignored and effectively blocked. For this reason I originally submitted to the record an exchange of emails between our two staffs that I believe showed a lack of cooperation.

I understand that after I left the Intelligence Subcommittee hearing last Thursday (April 6th) to attend an oversight hearing with Attorney General Gonzales in the Judiciary Committee, an objection was raised to the material that had already been entered into the record by unanimous consent during my opening statement. If you prefer, I am agreeable to accepting this letter and its attachments, which is a narrative of events as I know them, to substitute for the material unanimously entered into the record of the hearing last Thursday.

I originally made my official request that you hold oversight hearings into the NSA warrantless eavesdropping program in a letter sent 1/27/06. The only written response I received to my official request was an email from your personal staff sent to my Chief of Staff on 2/7/06 stating only this: "How does a two-bit Connecticut newspaper get wind of a letter sent by your boss to Chairman Simmons?"

My staff responded, "I don't know how this reporter got the letter. For your information, all of Congresswoman Lofgren's recent letters regarding FISA and NSA are posted on our website." Later you and I discussed this matter on the floor and I advised you that I had posted all relevant materials on the NSA issue on my web site. It is my view that this matter is the public's business, not private business.

When you did schedule a privacy hearing its focus did not appear to be the NSA matter. I attempted to remedy what I thought was a shortfall in that regard through inclusion of an NSA witness. You did not accommodate this effort. On 3/24/06, your staff received an email that in pertinent part asked that you: "Subpoena a person at the NSA who is familiar with the NSA surveillance program, who can talk about the program, what it entailed, its legal underpinnings, [and] its current status."

You declined this request with an email sent through your staff that said: "Chairman King will not allow it. Also, that is not the purpose of the hearing." I then found a potential witness, Dean Elizabeth Rindskopf Parker of the Pacific McGeorge School of Law, who could voluntarily testify on the NSA program. Although not a substitute for an NSA witness, Dean Parker, a former General Counsel of both the NSA and the CIA, might have knowledge that could provide insight to the subcommittee. She was, however, unavailable on the day that the hearing had been set. At my request, on 3/27/06, my staff sent an email requesting that the hearing be moved to accommodate her schedule. This request was denied because of an assertion that Congress would be out of session. I might add at this juncture that although Congress is often in recess we are not always in recess and I personally felt this response to be inadequate.

On 3/30/06, my staff again attempted to call witnesses that could speak to the NSA program, asking in pertinent part in their email: "Any final word on willingness to invite a NSA witness?" To which your staff replied: "None yet. Will let you know."

We did not receive an answer back and my staff followed up with an inquiry on 3/31/06, asking: "Any word back on the NSA witness? If it's a no, did an invite go out to Turley?" Your staff answered: "An invite to Turley will go out today."

This indicated that a NSA witness would not be called and that the hearing would not be postponed.

As I mentioned in my initial formal request to you in January, I believe that our Subcommittee has a responsibility to have oversight review of the NSA surveillance program recently dubbed the "terrorist surveillance program" by the Administration.

Last Thursday, the Attorney General testified that this program is not the only program being conducted. Accordingly, I suggest that we exercise our oversight jurisdiction on the additional program or programs that the Attorney General has testified under oath exist.

I understand that after I pressed for this oversight review questions are being raised about the jurisdiction of our Intelligence Subcommittee to have oversight over this intelligence matter. A letter setting forth the Subcommittee's jurisdiction to conduct hearings into this program signed by myself and Ranking Member Bennie Thompson was sent to you last Thursday after the hearing.

Last Thursday I also delivered to you a letter signed by 6 Members of the Subcommittee calling for Dean Parker to be invited to testify pursuant to Rule II(M) of the Subcommittee. Pursuant to Rule XI of the Rules of the House, the Subcommittee should reimburse Dean Parker according to the per diem rate authorized by the House Administration Committee, including actual travel expenses. Based on discussions with her staff, she may be available on Wednesday, May 10, 2006 to testify at another Subcommittee hearing. I hope that at this time you will give the Subcommittee an opportunity to conduct vital oversight into this secret NSA program.

As I mentioned in my January letter to you and during my opening statement last Thursday, I strongly feel that the Subcommittee has an obligation to exercise its oversight authority to review these NSA activities. I fully appreciate that as Chairman, you set the agenda for the Subcommittee. It is your decision to make but I hope you understand that I cannot remain silent if you are making what I view to be a serious error that is not in the best interests of our country. I remain ready to work with you on the things we can agree upon as the 109th Congress proceeds, but I simply cannot agree that permitting the NSA surveillance programs to escape our scrutiny is proper or in the best interests of America.

Sincerely,
Zoe Lofgren
Ranking Member, Subcommittee on Intelligence,
Information Sharing and Terrorism Risk Assessment
Committee on Homeland Security